

AGREEMENT FOR CONDUIT AND FIBER OPTIC LINE PLACEMENT

Agreement made this _____ day of _____, 2001 between the City of Lincoln, Nebraska, a municipal corporation, hereinafter "City" and AT&T and Touch America, hereinafter "Grantees".

1. Description of Premises. CITY agrees to allow Grantees to occupy and use a certain parcel of real property located on City of Lincoln property located generally in the City's wellfields in Saunders County, as shown on the attached Exhibit A (the "Premises"), which is incorporated herein by this reference.

2. Term of Agreement. The primary term ("Primary Term") of this Agreement will be for fifteen (15) years, and will commence on _____. The Primary Term will terminate on _____, unless sooner terminated as provided herein.

This Agreement may thereafter be renewed by the mutual consent of Grantees and the City. The City represents that at the time it enters into this Agreement it has no present intention not to renew this Agreement for any subsequent Terms.

3. Use of Premises. The Premises will be used for the purpose of installing, constructing, maintaining, repairing, operating and removing Grantees' communications equipment. For the purposes of this License, all of Grantees' equipment, lines, switches, power supplies, fiber optic lines, accessories, and necessary appurtenances will be referred to herein collectively as the "Communications Facility."

Grantees will submit plans and specifications for any buildings or facilities that it intends to use as part of the Communications Facility, to CITY for written approval prior to construction. The work shall be constructed in accordance with plans and specifications approved by the Department of Public Works and Utilities. The cable, where it is underground, shall be laid to a minimum depth of 3 feet from the top of the cable to the surface of the ground. All land surfaces and all pavement shall be restored to their original condition after the work is completed on each segment of the project. "As built" drawings shall be furnished to the City by Grantees to show the precise locations, depths, and nature of all materials installed in accordance with the agreement. The City shall have the right at any time when, in its judgment, it becomes necessary or advisable to require a change of location of said cable as a matter of safety, or on account of change of grade, resurfacing, repair, reconstruction of any street, alley, sidewalk, or other public ground, or the construction of any structure thereon, or for any other reason, all of which shall be done at the cost and expense of Grantees in a good and workmanlike manner. After submission of the plans, CITY shall have thirty (30) days to accept or reject Grantees' building plans (the "Approval Period"). Approvals will not be unreasonably withheld. If CITY does not approve the plans and specifications, this Agreement will be void at Grantees' election, and terminate without penalty. The approved plans and specifications shall be attached hereto as Exhibit B.

After CITY accepts the building plans, Grantees shall construct

and install, at Grantees' cost, the Communications Facility at the location depicted on Exhibit A, in accordance with the approved plans and specifications, Exhibit B. The Communications Facility may be installed by Grantees or by any of Grantees' agents or contractors.

Grantees may, at its own cost and expense, install, maintain and operate on the Premises, only the equipment necessary for the operation of the Communications Facility in accordance with the plans approved by CITY.

All work to be performed on the Premises shall be performed in a good and workmanlike manner, and in accordance with all applicable governmental laws, ordinances, regulations and codes. Grantees shall obtain all permits necessary for such construction. All contractors working on the premises shall carry statutory worker's compensation insurance and liability insurance coverages as are customarily maintained by reputable general contractors in the Lincoln, Nebraska area.

4. Fees. Grantees shall pay to CITY a fee to occupy and use the the Premises and space under the Premises. The annual Fee shall be \$6550.50 (\$1.50 per lineal foot for a total of 4.367 feet) payable in annual installments on or before the execution day of this agreement and each and every annual anniversary thereafter. Such fee is based upon the number of conduits being placed within the right-of-way. The annual fee in each succeeding year of of this agreement shall be 103% of the fee in effect during the immediately preceding license year (the "Percentage Increase") (for example, and by way of illustration only, if the Percentage increase of 103% is used and the prior year's fee was \$1000, the next year's rent would be \$1030). All payments shall be made payable to and mailed to the following address:

Lincoln Water system
Margaret Remmenga
555 South 10th Street
Lincoln, NE 68508

5. Access to CITY Property. It is acknowledged that the Communications Facility and appurtenances thereto are constructed on CITY property which is a vital part of CITY's operations. Grantees shall operate its Communication's Facility thereto on the Premises in such a manner so that the operation does not interfere with CITY's operation of its property nor will it interfere with access to the property by CITY personnel, agents or contractors. Grantees agrees to comply with any rules, regulations, and procedures that may be adopted by CITY from time to time to provide reasonable security measures to protect the Premises and CITY. CITY retains the right to use the Premises at any time in connection with the need of CITY to provide service to its customers. CITY will endeavor to do so in such a manner so as to not interfere with the construction, operation and maintenance of the Grantees' Communication Facility. CITY retains the right to use the Premises in any ways that do not interfere with Grantees' uses.

6. Taxes. Since the real property is owned and used by a governmental entity (CITY), it is tax exempt. Grantees shall be responsible for and pay all taxes

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before any penalties or interest shall accrue thereon, as an additional fee, if taxes are subsequently levied against the Premises. Grantees will be responsible for payment of all personal property taxes assessed directly upon and arising solely from its possession or use of the Communications Facility or buildings on the Premises.

7. Payment of Utilities. Grantees shall fully and promptly pay for all utility service of every kind furnished to the Premises for Grantees' uses throughout the term. CITY shall not be liable for any damage to equipment or loss of revenue to Grantees resulting from the interruption of utility services. All fees due under this Agreement shall continue notwithstanding any interruption of power or other required utility facilities, except for the willful act of CITY.

8. Liability. CITY shall not be liable for damage to Grantees' improvements or for any loss or damage to any vehicles parked upon the Premises, except for the willful act of CITY. Grantees shall at all times during the term of this agreement carry at its own expense public liability insurance of not less than One Million Dollars (\$1,000,000.00) for the injury to or death of one person, and not less than Two Million Dollars (\$2,000,000.00) for the injury to or the death of two or more persons arising out of a single accident or occurrence on the Premises, naming CITY as an additional insured on such policy. The City may, at its discretion, change the required amounts of such insurance during the term of this agreement. Grantees shall furnish CITY with a certificate of such insurance policy which shall provide such insurance policy shall not be reduced or the coverages changed without first having given CITY thirty (30) days written notice of such change. Any contractor or subcontractor performing work on the Premises for or on behalf of Grantees shall carry workers' compensation insurance, comprehensive general liability and automobile insurance covering the work in such amounts and with companies satisfactory to CITY with said policies naming CITY as an additional insured.

9. Property Damage Insurance. During the term of the agreement, Grantees shall keep in full force and effect an appropriate property damage insurance policy with respect to CITY's property in which the limits of the property damage policy shall be not less than One Million Dollars (\$1,000,000.00).

10. Indemnification. To the fullest extent permitted by law, the Grantees shall indemnify and Hold Harmless the City, its officers, agents and employees from and against Claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the Grantees' use and occupation of the Site, that results in any Claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by Grantees or anyone directly or indirectly employed by Grantees, or anyone for whose acts any of them may be liable, regardless of whether or not such Claim, damage, loss or expense is caused in part by a party indemnified hereunder. This section shall not require Grantees to indemnify or Hold Harmless the City for any losses, Claims, damages, and expenses arising out of or resulting from the sole negligence or

omission of the City.

11. Assignment, Renting or Leasing Space. Grantees shall have the right to sublicense or assign its rights under this Agreement to any party affiliated, under common control or otherwise related to Grantees, successor legal entities or any party acquiring substantially all the assets of Grantees (the "Control Group") without the consent of CITY. Grantees may sublicense or assign its rights under this License to any other entity with CITY's consent, which will not be unreasonably withheld; provided, however, such assignment or sublicense shall not relieve Grantees of any of its liability or responsibility hereunder.

12. Events of Default. Default shall occur if any one or more of the following events shall happen:

a. grantees shall default in the punctual payment of the license fee and such default shall continue for thirty (30) days after receipt of written notice from CITY; or

b. If either party shall neglect or fail to perform or observe any of the material provisions of this Agreement, and such failure is not cured within thirty (30) days after receipt of written notice thereof from the other party, the other party may, at its option, 1) cure the failure at the defaulting party's expense, or 2) terminate this Agreement. If any such default cannot reasonably be cured within thirty (30) days, the defaulting party will not be deemed to be in default under this Agreement if it commences curing such default within the thirty (30) day period and thereafter diligently pursues such cure to completion.

13. Environmental Laws. CITY warrants and represents that the Premises, and any existing improvements on the Premises are free of Hazardous Substances (as defined below). CITY will indemnify, protect, defend, and hold harmless Grantees from and against all claims, suits, actions, causes of action, assessments, losses, penalties, costs, damages and expenses, including, without limitation, attorneys' fees, sustained or incurred by Grantees pursuant to any federal, state or local laws, implementing regulations, common law or otherwise, dealing with matters relating to the environment, hazardous substances, toxic substances and/or contamination of any type whatsoever (collectively, "Hazardous Substances") in, upon or beneath the Premises, and the other improvements on the Premises (excluding the Communications Facility), provided this indemnification shall not apply with respect to any Hazardous Substances released by Grantees.

Grantees will indemnify, protect, defend and hold harmless CITY from and against all claims, suits, actions, causes of action, assessments, losses, penalties, costs, damages and expenses, including, without limitation, attorneys' fees, sustained or incurred by CITY pursuant to any federal, state or local laws, implementing regulations, common law or otherwise dealing with matters relating to Hazardous Substances released by Grantees in, upon or

beneath the Premises, the Communication Facility, and the improvements on the Premises.

The indemnification in this section specifically include without limitation costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority.

14. Nebraska Law. This agreement shall be construed and enforced in accordance with the laws of the State of Nebraska and any legal action brought in respect thereto shall be brought either in the state courts of the State of Nebraska located in Lincoln, Nebraska, or if applicable, in the United States District Court located in Lincoln, Nebraska.

15. Binding Effect. This Agreement shall inure to the benefit and be binding upon Grantees, its successors or assigns.

16. Additional Agreements. Grantees acknowledges the right and authority of CITY to enter into additional agreements for telecommunications equipment and appurtenances thereto of other users on CITY's property so long as such agreement does not interfere with Grantees' use of its Communication Facility.

17. Entire Agreement. This agreement contains the entire understanding of the parties hereto with respect to the conditions of this agreement and supersedes all prior agreements and understandings between the parties with respect to such subject matter. The representations, warranties, undertakings, or promises, whether oral, implied, written, or otherwise, have been made by either party hereto to the other unless expressly stated in this agreement or unless mutually agreed to in writing between the parties hereto after the date hereto, and neither party has relied on any verbal representation, agreements, or undertakings not expressly set forth herein.

18. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier, to the following addresses:

CITY:	Lincoln Water System
	555 S. 10Th
	Lincoln, NE 68508
	TEL: (402) 441-6000
	FAX: (402) 476-0528

With a copy to:	Steven Huggenberger
	Assistant City Attorney
	575 S. 10Th / Room 4201
	Lincoln, Nebraska 68508

TEL: (402) 441-7286
FAX: (402) 441-8812

GRANTEES: AT&T
Touch America

A party may change its address to which any notice or demand may be given by written notice thereof to the other party.

19. Contingencies. This Agreement and Grantees' obligations hereunder are expressly contingent upon the following:

a. Grantees' satisfaction with the status of title to the Premises and, at Grantees' option and its expense, Grantees' receipt of a licensehold title insurance policy insuring its interest in the Premises, in form and substance satisfactory to Grantees. CITY shall execute the standard form of title company affidavit in order to enable Grantees to obtain title insurance on the Premises free and clear of all exceptions other than those which have been disclosed in writing to Grantees and which do not interfere with Grantees' use of the Premises; and

b. Grantees' satisfaction, in its sole and absolute discretion, with the feasibility of engineering, installing, constructing and operating the Communication's Facility; and Grantees' receipt of all necessary or appropriate building and construction permits and all licenses, permits, approvals and consents from all applicable governmental authorities necessary or appropriate for Grantees to use and operate the Communication's Facility on the Premise.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF LINCOLN, NEBRASKA,

By: _____
Mayor Don Wesely

GRANTEES

AT&T

By: Peggy J. Wornack
Title: SR. 000 TECHNICAL STAFF MGR.

TOUCH AMERICA

By: [Signature]
Title: PROJECT MANAGER

EXHIBIT A

DESCRIPTION OF PREMISES

To the Agreement dated _____, 2001, by and between the City of Lincoln and Grantees.

The Land is situated in the County of Saunders, State of Nebraska, being more particularly described and/or depicted as follows :

On property of the City of Lincoln in Sections 19 and 30 in Township 13 N Range 10 E and on property in Sections 24 and 25 in Township 13 N Range 9 E

EXHIBIT B

PLANS AND SPECIFICATIONS

To the Agreement dated _____, 2001, by and between City of Lincoln and Grantees.

The Plans and Specifications are described and/or attached as follows:

As indicated on the Attached map.



AT&T & Touch America

SAUNDERS COUNTY
NEBRASKA

CONSTRUCTION NOTE:
MAINTAIN A MINIMUM OF 34"
OF VERTICAL SEPARATION FROM
CITY OF LINCOLN WATER LINE.

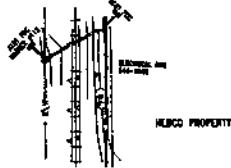
CITY OF LINCOLN PROPERTY

SECTION 24
TOWNSHIP 13 N
RANGE 9 E

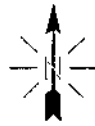
SECTION 19
TOWNSHIP 13 N
RANGE 10 E

SECTION 25
TOWNSHIP 13 N
RANGE 9 E

SECTION 30
TOWNSHIP 13 N
RANGE 10 E



HILCO PROPERTY



CITY OF
LINCOLN PROPERTY

PROPOSED CONDUIT
INSTALLATION

ENTER CITY OF
LINCOLN PROPERTY

HILCO PROPERTY

NOTES: THIS PLAN HAS BEEN PREPARED FROM AVAILABLE RECORDS AND FIELD OBSERVATIONS. IT IS THE CONTRACTOR'S RESPONSIBILITY TO FIELD LOCATE ALL UTILITIES AND OBTAIN NECESSARY PERMISSIONS FOR CONSTRUCTION. COMPLETE REPAIR OF ALL UTILITIES SHALL BE AT THE EXPENSE OF THE CONTRACTOR.



CALL BEFORE YOU DIG
UNDEGROUND SERVICE ALERT
1-800-4-A-DIG
OR 1-800-368-5848